

Under Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. 86 Ill. Adm. Code 140.101. (This is a GIL.)

October 17, 2001

Dear Xxxxx:

This letter is in response to your letter dated August 1, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

After speaking with your Sales Tax department, they have referred me to your group to give me a "letter ruling". I'm not sure if that is the correct phrase.

First, we are a marketing design company in CITY, IL -- . We have a reseller certificate number.

Our main use for the reseller certificate is to resell custom print work.

A client hires us to do a print design and to print the actual product (letterhead, brochures, flyers, etc.). We hire the printer to do the actual printing or we hire a print broker to source the job and the broker bills us.

For example, our printer or broker would charge us \$1,000 for the printing. We would mark it up to \$1,200 and bill our customer the \$1,200 plus 8.25% sales tax. We have always charged 8.25%. Our printers and brokers do not charge our company sales tax. (We do not charge any sales tax on our design work). As an FYI, this is all custom work not stock items.

One of our clients, AAA has challenged the 8.25% saying that it's too high and that we should only be charging on the paper portion of the printing, not the labor. As a reseller, we do not know what portion of what we sell is paper vs. labor. I also don't want to take the risk of an audit based on what my printer would tell me.

My question is... What rate should I be charging? Is there a reduced amount that I can use as a fixed rate that is acceptable to you?

As I have been charging 8.25% for the past 2 years, what do I do about all the past billing that I have done?

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. Under the Service Occupation Tax Act, it is improper to charge the customer tax on 100% of the selling price.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred (e.g. paper, ink).

Under the second method, if servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above stated methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service and upon selling their product, are required to collect the corresponding Service Use Tax from their customers. See 86 Ill. Adm. Code 140.106.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers. See, 86 Ill. Adm. Code 140.106.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered suppliers. Those servicemen are not authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax.

The situation you describe appears to be a multi-service situation. Multi-service situations exist where a primary serviceman subcontracts work to a secondary serviceman. In multi-service

situations, a primary serviceman's cost price is determined either by the separately stated selling price of the tangible personal property transferred from a secondary serviceman, or if the secondary serviceman does not separately state the cost of goods, it is presumed that the primary serviceman's cost price is 50% of the secondary serviceman's total charge. See 86 Ill. Adm. Code 140.301(a), enclosed.

When both primary servicemen and secondary servicemen are registered, primary servicemen provide secondary servicemen with a Certificate of Resale. A primary serviceman would then incur Service Occupation Tax based upon the separately stated selling price of the property, 50% of the bill to the service customers or as outlined in method three described above. Upon selling their product, servicemen are required to collect the corresponding Service Use Tax from their customers. See, 86 Ill. Adm. Code 140.106.

Please note that Public Act 89-675, effective August 14, 1996, states that if an unregistered de minimis serviceman subcontracts service work to another unregistered de minimis secondary serviceman, the primary serviceman does not incur a Use Tax liability if the secondary serviceman (i) has paid or will pay Use Tax on his or her cost price of any tangible personal property transferred to the primary serviceman and (ii) certifies that fact in writing to the primary serviceman. This certification option is only available in multi-service situations when both the primary and secondary servicemen are unregistered and de minimis, 35 ILCS 110/2 and 115/2. If the primary serviceman is registered and the secondary serviceman is unregistered it will not work.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

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SM:JTG:mzk

Enc.